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Rhoda Grant MSP.,  
The Scottish Parliament,  
Edinburgh  
EH991SP  
26<sup>th</sup> Feb 2010

Dear Rhoda,

ASSIST is part of Glasgow Community and Safety Services, and it is on their behalf that I reply. GCSS also coordinate and deliver on all work related to Violence Against Women on behalf of Glasgow City Council including domestic abuse, rape and sexual assault and commercial sexual exploitation.

Thank you very much for the opportunity to respond to the consultation on the proposed Civil Protection Orders and Access to Justice (Scotland) Bill. We are very pleased indeed that you are submitting this bill as we believe it addresses serious loopholes in Scots law that affects those who experience domestic abuse.

There is not sufficient legal protection for those who experience violence and abuse and we believe that the measures in your bill will improve the situation. Our views on the consultation questions are detailed below.

**Question 1 What advantages or problems might arise as a result of removing the course of conduct requirement?**

Removing the course of conduct requirement will ensure the state is protecting victims at the earliest opportunity. It is currently extremely difficult to ensure that evidential requirements are met in situations of domestic abuse. In the criminal context, domestic abuse is by its very nature, a difficult crime to investigate and more often than not it occurs in private with little or no corroboration. The current situation of evidencing harassment twice before a court will consider a criminal NHO really is prohibitive. In our experience, it is very rare indeed for a criminal NHO to be awarded after only two incidents. A criminal NHO is usually only awarded after multiple incidents have occurred over a considerable period of time.

Similar evidential issues arise in a civil context. There is research evidence that women are assaulted verbally and physically on many occasions prior to making contact with any help seeking agencies including the police. We have anecdotal evidence that the difficulties of evidencing a course of conduct are such that that women decide that the risks to their safety of failing to obtain an order is too great.

**Question 2 What do you see as the main benefits of making it easier to obtain a non harassment order?**

We believe victims will be safer. Currently Non Harassment Orders when they can be obtained, are the best protection order available, although very expensive. NHO's act as a deterrent and taken together with other parts of this bill will make a good contribution to keeping those who experience abuse and harassment safer.

During criminal proceedings, special bail conditions can be granted to protect the Complainer. We have experienced a reluctance by both Sheriffs and Solicitors to pursue or indeed grant an interdict while special bail conditions are in place. Of course, when a case is disposed, all special bail conditions lapse, but there is usually a gap before any protective orders are obtained. Allowing easier access to an order that could more readily be used on completion of a case would ensure that a Complainer was not without protection once the case was disposed of. Instead, Complainers' could access continued protection

### **Question 3 What advantages or problems might arise with the removal of means testing?**

The advantages far outweigh the difficulties. Women experience real financial problems in attempting to access justice via the civil route. Following the changes to Legal Aid, there are fewer solicitors willing to carry out civil legal work. If a woman is successful in finding a solicitor, the legal thresholds are such that very few qualify despite the welcome changes instigated by the Government recently. The removal of means testing thus ensures equal access to justice and protection for all.

It has been suggested that 1 in 4 women cannot proceed with an application for a civil protection order due to legal aid contribution levels or failure to access legal aid. Removing means testing would prevent the accrual of significant debt in order to achieve legal protection.

The only foreseeable problem would be the loss of income that results from the current Legal Aid position. However, justice and protection for those who experience domestic abuse is a right we should afford all within society.

### **Question 4 What do you see as the main benefits of removing means testing?**

All Governments have a responsibility to protect its citizens. The removal of means testing will allow all victims access to state protection in law and this is a fundamental human right.

There is no other type of crime where society asks the victim to pay for the protection of the law. It would be seen as ridiculous if following someone's house being robbed, we asked a victim to obtain a specific order in order that the same thing did not happen again, yet that is what we ask those who experience domestic abuse to do.

### **Question 5 What are the advantages and problems that might arise from making it a criminal offence to breach an interdict with a power of arrest?**

There would be considerable advantages to criminalising a breach of interdict with a power of arrest. It would free up valuable civil court time and ensure less lengthy – and expensive proceedings. In addition, lengthy civil proceedings can leave a victim subject to ongoing abuse and harassment, at the risk of being seriously hurt or harmed and without protection such as special bail conditions.

The current situation places the victim in considerable difficulty. We have had reports that Police Officers take little or no action and initially refer the victim to her Solicitor or tell victims that they have no powers to arrest in a civil matter. Victims have reported that they have had to emphasise that there is a power of arrest attached to their interdict. It seems therefore that there is confusion at present that would be removed with the criminalisation of the breach of interdict.

There are also some victims who, for safety reasons, do not pursue an action for a breach of interdict as the abuser views this as a direct challenge to his behaviour.

Criminalisation of a breach of interdict with a power of arrest would place the responsibility on the Police and Procurator Fiscal to decide whether a crime has been committed and whether it is in the public interest to progress it. This would deliver a clear message to those who use violence that if a court order is breached, it is treated seriously.

**Question 6 What do you see as the main benefits of making it a criminal offence to breach an interdict with a power of arrest?**

The benefits of such a move would be an increase in the safety of those experiencing abuse. There are clients of ASSIST whose partners or ex-partners have been arrested following a breach of interdict. As the consultation paper indicates, the partners or ex-partners were remanded in custody for two days. It proved very difficult indeed to explain to clients why this is the only option available to the Sheriff and it undermines the value of the protective order. It is not an effective deterrent to those who use violence.

Domestic abuse is a pattern of behaviour which involves a process of coercive control by perpetrators and it is crucial that offenders are held accountable for their behaviour. Glasgow's Domestic Abuse Court and risk management processes such as the MARACs in Glasgow and North Lanarkshire and Strathclyde Police's Multi Agency Tasking and Coordinating have improved the situation greatly. Offenders who were often invisible and their offences not treated seriously are beginning to be held accountable. However, progress is slow and a significant proportion of Scotland's population do not have access to such procedures. The changes in this bill would provide for effective change for all of Scotland's victims of abuse.

**Question 7 What costs would be associated with all of the proposals contained in this Bill?**

It is not possible without further information to estimate costs however, the rights of citizens to live free from violence and abuse must be the prime objective. The cost of domestic abuse in Scotland has never been formally calculated. However, based on the Walby study (2004), the Scottish Government document Safer Lives: Changed Lives (2008) estimated that some £4 billion could be the cost to the Scottish public purse of violence against women with domestic abuse accounting for over half that amount at £2.3 billion. Early interventions, such as provisions that prevent future behaviour rather than punish previous behaviour should present considerable savings to the public purse.

Safer Lives: Changed Lives (2008) also highlights the need for legal remedies that deal adequately with the perpetrator and victim. The passage of this Bill would accord with this need and promote a robust response to those who use violence against women.

This bill closes a number of loopholes and would make a crucial difference to thousands of victims across Scotland. We fervently hope it secures cross party support.

Yours sincerely,

Mhairi McGowan  
Operations Manager  
ASSIST